

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
ZIONESS MOVEMENT, INC.,	:	
	:	
Plaintiff,	:	<u>ORDER REGULATING</u>
	:	<u>PROCEEDINGS</u>
-against-	:	
	:	21 Civ. 7429 (AKH)
THE LAWFARE PROJECT, INC.,	:	
	:	
Defendant/ Third-Party Plaintiff	:	
	:	
-against-	:	
	:	
ZIONESS MOVEMENT, INC. and AMANDA	:	
BERMAN,	:	
	:	
Third-Party Defendant	:	
-----	x	

ALVIN K. HELLERSTEIN, U.S.D.J.:


The Court reminds counsel that the final pre-trial conference has been set for September 11, 2023 at 2:30pm, with trial beginning on September 18, 2023 at 10:00am. The status conference scheduled for August 10, 2023 is adjourned to August 24, 2023 at 10:30am. Parties also should be prepared to present arguments regarding issues hereinafter described. As stated in the previous conference, because of essential differences between the issues alleged in the complaint and the third-party complaint, and in the Court's discretion, the third-party claims will be tried at a later date. *See Smith v. Lightning Bolt Prods., Inc.* 861 F.2d 363, 370 (2d Cir. 1988).

In connection with the upcoming trial, the Court wishes briefing of whether trial shall proceed by jury as requested, or by court. Both parties shall file briefing by August 22, 2023 at 4:00pm answering the following questions:

- 1) The Lanham Act's provisions for statutory damages rooted in equity do not require trial by jury. *See, e.g., Hard Candy, LLC v. Anastasia Beverly Hills, Inc.* 921 F.3d 1343 (11th Cir. 2019); *Gucci America, Inc. v. Weixing Li*, 768 F.3d 122, 131 (2d Cir. 2014). A complaint for equitable relief or unjust enrichment also does not require trial by jury. *See RVC Floor Décor, Ltd. v. Floor & Décor Outlets of America, Inc.*, 18-cv-6449, 2023 WL 3092918, at *7 (E.D.N.Y. Apr. 26, 2023). Is the mere allegation that actual damages were suffered sufficient to justify trial by jury? If not, what level of showing is required?
- 2) Does the Court have discretion to require the Plaintiff and Defendant to decide, by the final pre-trial conference, whether they seek actual or statutory damages under 15 U.S.C. § 1117(d)?
- 3) Are expenses incurred in cancellation proceedings before the Trademark Trial and Appeal Board recoverable as sanctions, which is triable by a court, or damages triable by a jury?

SO ORDERED.

Dated: August 10, 2023
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge